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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AJAY KUMAR, HANUMANTHA RAO SUSARLA, and
PRAKASH KHEMANI

Appeal 2008-1649
Application 10/087,224¹
Technology Center 2400

Decided: November 19, 2008

Before: JAY P. LUCAS, ST. JOHN COURTENAY III, and
CAROLYN D. THOMAS, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF CASE

¹ Application filed March 1, 2002. The real party in interest is Sun Microsystems, Inc.

Appellants appeal from a final rejection of claims 1 to 26 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention relates to a system and method for efficiently preserving session data for minimizing data loss in case of system failure by selectively backing up attributes of sessions. In the words of the Appellants:

A client-server system may include a distributed store configured to maintain a primary state of session data including one or more attributes. One or more other nodes may include other instance of the primary state. The system may compare the primary state to a benchmark primary state to generate a subset of the attributes of the session data that have been modified in the primary state. Another instance of the primary state may be synchronized with the primary state using the subset of the attributes. In one embodiment, the comparing may include performing binary differencing of binary representations of the primary state and the benchmark primary state to determine the modified attributes. In another embodiment, the comparing may include performing object graph differencing of object graph representations of the primary state and the benchmark primary state to determine the modified attributes.
(Spec., p. 34, Abstract)

Claim 1 is exemplary:

1. A system, comprising:

a first node of a distributed store comprising a primary state of session data configured for access by a plurality of application servers, wherein the session data comprises a plurality of attributes;

another node comprising a back-up instance of the primary state;

wherein the system is configured to:

compare the primary state to a benchmark of the primary state to generated a subset of the attributes of the session data that have been modified in the primary state; and

synchronize the back-up instance of the primary state with the primary state using the subset of the attributes of the session data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Everdell

US 2002/0165961 A1

Nov. 7, 2002

REJECTIONS

Claims 1 to 26 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Everdell.

Groups of Claims:

The rejection will be discussed in claim order, with claims of similar content grouped as presented by the Appellants.

Appellants contend that the claimed subject matter is not anticipated by Everdell for failure of the reference to anticipate all the claimed limitations. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We affirm the rejection.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e). The issue turns on whether Everdell demonstrates the various limitations of the claims, when those limitations are fairly but broadly interpreted in accordance with current legal precedents.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellants have invented an improved system and method to minimize data loss in case of failures in a distributed data system. (Spec. 2, ¶ 5). Session data from a web session is backed up to a distributed storage device. (See Figure 1).
2. Session data is defined as including “information related to environmental attributes, processes, and client server interaction.” (Spec. 7, ¶ 28). An attribute “may be a portion or element of the session data, and may be one of any of various types of data that may be used in a session such as programming language objects or classes (e.g. Java objects or classes), strings, integers, Booleans, characters, real number representations, or any other type of computer-representable data.” (Spec. 8, ¶ 29).

PRINCIPLES OF LAW

“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

The analysis begins with an interpretation of the claims: “Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims The second step in the analyses requires a comparison of the properly construed claim to the prior art.” *Medichem S.A. v. Rolabo S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

Shortly after the creation of this court, Judge Rich wrote that “[t]he descriptive part of the specification aids in ascertaining the scope and meaning of the claims inasmuch as the words of the claims must be based on the description. The specification is, thus, the primary basis for construing the claims.” *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452

(Fed. Cir. 1985). On numerous occasions since then, we have reaffirmed that point..." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005).

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d at 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d at 1313 (Fed. Cir. 2005) (en banc).

ANALYSIS

From our review of the administrative record, we find that the Examiner has presented a prima facie case for the rejections of Appellants' claims under 35 U.S.C. §102. The prima facie case is presented on pages 3 to 8 of the Examiner's Answer². In opposition, Appellants present a number of arguments.

² We observe that a rejection under 35 U.S.C. § 101 has not been applied to claims 21 to 26 for being non-statutory, although they encompass a computer readable medium comprising a modulated signal (see Specification, page 26, ¶ 80). In view of *In re Nuijten*, 500 F.3d 1346, 1359 (Fed. Cir. 2007) Appellants are advised in future prosecution of this application to make suitable amendments to avoid non-statutory claims.

*Arguments with respect to the rejection
of claims 1 to 26
under 35 U.S.C. § 102*

Appellants argue claim 1 with claims 11, 12, 15, and 21. The first argument addresses the limitation "...comprising a primary state of session data". Appellants contend that "a network connection is not the same as a session, as is well known by anyone of skill in the art to which the present invention pertains." (Br., p. 11, middle). Thus, Appellants reason, the Everdell reference does not anticipate the claim.

Everdell is an enormous Patent Application Publication which describes in its 258 drawing sheets and 111 pages a system and method for controlling information among network devices in a large telecommunications network. In relevant portion, for example Figure 2a, Everdell teaches a Network Management System (NMS) in which configuration data on a server 851 is backed up by storing changes onto a NMS database 61 and also onto remote network devices 540. In the remote devices that store instances of the configuration data there are further backups of the changes onto devices such as flash memory 853.

Claim interpretation is guided by such cases as *Phillips v. AWH Corp.* (cited above) which teach us that terms in the Specification are given their ordinary and customary meaning, subject to definitions presented in the Specification. In considering the meaning of Appellants' claim of "a primary state of session data" we look to the specification which reads "a session may include a series of user-application interactions that may be tracked by one or more servers." (Spec. 1, ¶ 2). As reasoned by the

Examiner, the configuration data of Everdell includes client server connections that define the user-application interactions. (Ans., p. 9, middle). We add to that reasoning by observing in Everdell's ¶ 134 a teaching of a series of session data elements, including tracking and storing statistics on users with a high number of transactions with the servers as the "top talkers." Considering the definitions in the Specification (See FF #2 above), we consider the stored information in the Everdell reference to encompass the term "session data" as broadly but fairly interpreted in the light of the Appellants' Specification.

Appellants next contend that Everdell fails to disclose nodes "and another node" storing a back-up instance of the primary state of the session data. As noted in the discussion concerning Figure 2a just above, the Everdell reference teaches that state information concerning the session data is stored in multiple backup devices, including NMS database 61, remote database 42, and even flash memory 853. We thus have in Everdell a teaching of the claimed "another node" comprising the backup instance.

Appellants next argue that Everdell fails to disclose the claimed limitations concerning the attributes of the session data that have been modified in the primary state. (Br., p. 13, middle). Appellants, in the Specification, explain that saving only the changed portions of the session data increases efficiency and reduces storage requirements. (Spec. p. 14, ¶ 46). Everdell teaches that only changes to the database need be stored. (Everdell, ¶ 128). The Examiner further explains the relation of Everdell to the claimed limitation. (Ans., p. 13).

Concerning claims 3, 13, 16, 17, 22, and 23, Appellants first contend that the Everdell reference does not teach binary differencing of a binary representation of the benchmark to locate the modified attributes. (Br. 16, bottom). We decline to find error in the rejection on this point, for the reasons expressed by the Examiner. (Ans., p. 14, bottom). The Appellants have not established a special definition in the Specification for binary differencing. Nor have they established by evidence a common usage of the term which would fail to read on the “any changes to configuration database” of digital (binary) data of ¶ 128 of Everdell. (See *Phillips v. AWH Corp.* (cited above)).

In a similar manner in relation to claims 4, 14, 18, and 24, Appellants have failed to establish in their Specification any unique definition of “object graph differencing” that would obviate the teachings of Everdell. Inherent in the graphical user interface is the ability to distinguish between different attributes that are displayed on a screen. For example, different numbers appear. We have not found in the Specification a description of the technique which, when fairly but broadly interpreted, distinguishes over the cited art.

The remaining issues raised by the Appellants in the Brief were sufficiently resolved by the Examiner in the Answer, pages 17 to 20.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 26.

DECISION

The Examiner's rejection of claims 1 to 26 is Affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

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